

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.455 OF 2016

Shri. Ajit Ganpati Suryavanshi

.....Appellant

V/s.

Shri. Shivaji Narayan Suryavanshi

....Respondent

* * * *

Mr. R.V. Bansode, Advocate for the appellant.

Mr. S.C. Mangle i/by. Mr. Sachin B. Chandan, Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 23rd January, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. This appeal is preferred by the plaintiff in Regular Civil Suit No. 95 of 2005. Initially, the suit was filed for preventive injunction, suit was amended and decree was sought for mandatory injunction. Thus, the appellant-plaintiff sought mandatory injunction against the defendant

for removal of the construction allegedly made on the suit plot no. 318. To resolve the issue of alleged encroachment, besides the Surveyor, Court Commissioner was appointed. The Surveyor, Mr. Kamble and the Court Commissioner, Mr. Kulkarni found that there was no encroachment and on appreciating the evidence of these two witnesses, both the Courts below concurrently held that plaintiff had failed to prove encroachment on the plot by the defendant. The learned Counsel for the appellant submitted that, both the Courts have not appreciated the evidence delivery instruction note right perspective in as much as the photographs produced by the plaintiff through his witness, P.W.2-Dhanaji contradicts the report of the Surveyor. It appears, Mr. Kulkarni, the Court Commissioner was called upon to explain this discrepancy between the photographs and the report. Mr. Kulkarni, the Court Commissioner clarified the discrepancy and submitted that no encroachment was found on the suit property as alleged by the plaintiff. The evidence of these two witnesses was examined by the plaintiff. The learned Counsel further

submitted that, the matter may be remanded and another Commissioner may be appointed to resolve the issue. I do not agree with the submission of the learned Counsel for the appellant since both the Courts below upon appreciating the evidence of the Surveyor, as well as, the Court Commissioner recorded a finding of fact which does not require any interference in the Second Appeal. The Appeal does not give rise to any substantial question of law. The Appeal is accordingly dismissed.

(SANDEEP K. SHINDE, J)